

REMARKS/ARGUMENTS

The Examiner has delineated the following inventions as being patentably distinct.

- Group I: Claims 1-9 and 20, drawn to processes for the continuous preparation of a chemical compound in at least one reactor, wherein at least one of the reactors is a shell-and-tube reactor, classified in various classes and subclasses;
- Group II: Claims 10-18, drawn to a shell-and-tube reactor and apparatus for the continuous preparation of a chemical compound, classified in various classes and subclasses; and
- Group III: Claim 19, drawn to a method of improving the selectivity in the preparation of a chemical compound wherein the preparation is carried out in a shell-and-tube reactor, classified in various classes and subclasses.

Applicants provisionally elect with traverse the invention of Group II (Claims 10-18 directed to the shell-and-tube reactor and apparatus for the continuous preparation of a chemical compound.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions that the claims of the restricted groups are independent or patentably distinct.

The claims of Groups I-III are related as product and apparatus for making said product, and as such are considered interdependent and should be examined together on the merits especially wherein the sole disclosure utility of the product is that disclosed in the specification.

The claims of Groups I and III further define the invention of Group II. The Examiner has failed to show, other than allege, that the claims of Group II can find other methods besides that of Group I and III. There is a commonality that exists between the Groups I, II, and III. It is a technical relationship that involves the same feature, and it is this technical feature that defines the contribution which each of the groups, taken as a whole makes over the prior art.

Different classification of subject matter to be divided is not conclusive proof of independent status and divisibility. Method, product, and the use of said product are considered related inventions under 37 C.F.R. § 1.475(b) and unity of invention between the groups exists.

Applicants respectfully traverse on the additional grounds that the Office has not shown that a burden exists in searching the entire application.

Further, the M.P.E.P. § 803 states as follows:

“If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on its merits, even though it includes claims to distinct or independent inventions.”

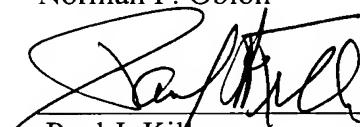
Applicants submit that a search of all the claims would not constitute a serious burden on the Office. In fact the International Search Authority has searched all of the claims together. As the Office has not shown any evidence that a restriction should now be required when the International Preliminary Report did not, the restriction is believed to be improper. 37 C.F.R. § 1.475(b) provides in relevant part that a “national stage application containing claims to different categories of invention will be considered to have unity of inventions if the claims are drawn to --(3) a product, process, and use.”

For the reasons set forth above, Applicants request that the restriction requirement be withdrawn.

Applicants request that if Group II is found allowable, Groups I and III which include the limitation of the allowable claims be rejoined.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, L.L.P.
Norman F. Oblon



Paul J. Kilos
Registration No. 58,014

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/09)